Cambodia: Investment Climate Statement

Cambodia, a developing country, began the transformation from a command economy to the free market in the late 1980s. It has now integrated into the regional and world trading framework. Cambodia joined ASEAN in 1998 and in September 2004, became a member of the World Trade Organization (WTO). It has shown interest in participating in other international trading arrangements, including APEC.

Cambodia is behind schedule in fulfilling its WTO commitments to pass necessary business legislation, partly as a result of the one-year political deadlock after the 2003 election. The government has either completed drafts of most of the required laws or is waiting for their approval by the National Assembly. However, the National Assembly has been slow to pass the needed legislation. Since March, 2006, the National Assembly has passed only two of the remaining 28 WTO-required legislative items.

Since the re-establishment of a constitutional monarchy in 1993, the economy has grown steadily, except for a period between mid-1997 and late 1998 when Cambodia suffered political instability and the Asian financial crisis affected business activity. The economy began to rebound in late 1998 with the establishment of a new coalition government.

Real GDP averaged 7.7 percent during the 1994-2005 period. Despite the expiration of the multi-fiber agreement of the garment sector at the end of 2004, the revised economic growth figure for 2005 was 13.4 percent, the highest for the last decade, and per capita GDP was some $440. The high growth was generated by the garment and tourism sectors and good weather for agriculture. For 2006, the growth rate is provisionally forecast to decrease to 8.9 percent, mainly due to the slower growth of the agriculture sector.

The year-on-year inflation has been within the acceptable range. In 2005, the inflation rate was 6.7 percent, which was the highest in five years. The rising price of fuel was one of the major factors contributing to inflation. However, inflation is expected to fall to 5.1 percent in 2006.

Foreign Direct Investment (FDI) has declined in recent years, but spiked in 2005 to $300 million, compared to $45 million in 2004. Most of the increase was due to a $200 million Chinese hydroelectric power project. Corruption has been singled out as one of the most serious deterrents to private investment. Given inadequate private investment and poor revenue collection, Cambodia remains dependent largely on foreign donor funding for budget assistance, capital expenditure and social services.

Since early 1999, the Cambodian government has intensified its economic reform program, a process the international financial institutions and donors encourage, participate in and monitor closely. The government has over the past year publicly committed itself on numerous occasions to fighting corruption, pursuing good governance, and increasing transparency and predictability. This strategy is set out in the government's latest public reform effort called the "Rectangular Strategy for Growth, Employment, Equity, and Efficiency."

The government has initiated specific measures to promote business, especially small and medium businesses, by reducing costs and the time required for business registration and by establishing a number of committees for trade facilitation and business promotion.

A. Openness to Foreign Investment

Cambodia's 1994 Law on Investment established an open and liberal foreign investment regime. All sectors of the economy are open to foreign investment and 100% foreign ownership is permitted in most sectors. There are a few sectors that are open to foreign investors subject to conditions, local equity participation or prior authorization from relevant authorities. These sectors include manufacture of cigarettes, movie production, rice milling, exploitation of gemstones, publishing and printing, radio and television, manufacturing of wood and stone carvings, and silk weaving.

The government has issued a sub-decree restricting foreign ownership of hospitals and clinics and forbidding the employment of non-Cambodian doctors in any specialty in which the Ministry of Health considers there to be an adequate number of Cambodian practitioners. Investment incentives vary according to the nature of the investment project.

Under a sub-decree dated September 2005, Cambodia prohibits certain investment activities, including investment in production or processing of psychotropic and narcotic substances, production of poisonous chemicals, agricultural pesticide/insecticides and other goods that use chemical substances that affect public health and the environment. Processing and production of electric power by using waste imported from foreign countries are prohibited, as is business engaged in forestry exploitation.

B. Major Taxation Issues

The Taxation Law adopted in 1997 governs Cambodia's taxation system. Seeking to increase government revenue, the international financial institutions recommended that the Cambodian government scale back its investment incentives. Consequently, the Cambodian government amended the law in 1999 and 2003. The law creates regimes for profit (20%), salary (5 to 20%), withholding (4 to 15%), value-added (10%) and excise taxes (rates vary).

The amendments to the law eliminated the special nine percent corporate tax rate for all new investments. Investments approved prior to the amendments to the Law on Investment are entitled to the special nine percent rate for a transitional period of not more than five years, beginning from the fiscal year after the promulgation of the amendments to the Law on Investment. After this five-year period, such investments will also be subject to the standard 20 percent rate. The amendments brought to an end the tax-free reinvestment of profits and the rights to tax-free repatriation of earnings and other incomes by approved enterprises.

While some incentives have been eliminated, the law provides a simplified and transparent mechanism for investment approval and shortens the approval process for new investments.

Article 44 of the Constitution provides that only Khmer legal entities and citizens of Khmer nationality have the right to own land. Aside from this, there is little or no discrimination against foreign investors either at the time of initial investment or after investment. Some foreign businesses have reported, however, that they are at a disadvantage vis-à-vis Cambodian or other foreign rivals, who engage in acts of corruption or tax evasion, or take advantage of Cambodia's poorly enforced legal regulations.

The privatization of state enterprises and transactions involving state property have not always been carried out in a transparent manner. In several instances, the public learned that enterprises were for sale or swap only after the government announced a sale or deal to a particular buyer.

Investor rights (investment guarantees) provided for in the Law on Investment include:

--Foreign investors shall not be treated in a discriminatory manner by reason of being a foreign entity, except in respect to land ownership as provided for in the Constitution of the Kingdom of Cambodia.

--The Royal Government of Cambodia shall not undertake a nationalization policy that adversely affects the private property of investors.

--The Royal Government of Cambodia shall not fix the price of products or fees for services.

--The Royal Government of Cambodia, in accordance with relevant laws and regulations, shall permit investors to purchase foreign currencies through the banking system and to remit abroad those currencies as payments for imports, repayments on loans, payments of royalties and management fees, profit remittances and repatriation of capital.

C. Conversion and Transfer Policies

There are no restrictions on the conversion of capital for investors, as noted above. The Foreign Exchange Law does allow the National Bank of Cambodia (the central bank) to implement exchange controls in the event of a crisis; the law does not define what would constitute a crisis. The U.S. Embassy is not aware of any cases in which investors have encountered obstacles in converting local to foreign currency or in sending capital out of the country.

The US dollar is widely used and circulated in the economy. The 2006 exchange rate was stable, although slightly depreciated compared to 2005. The rate currently is $1 = 4,100 riel. The government is committed to maintaining exchange rate stability.

D. Expropriation and Compensation

Article 44 of the Cambodian Constitution, which restricts land ownership to Cambodian nationals, also states that "the (state's) right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance." Article 58 states that "the control and use of state properties shall be determined by law." The Law on Investment provides that "the Royal Government of Cambodia shall not undertake a nationalization policy which adversely affects the private property of investors."

A Cambodian government sub-decree abrogated certificates for possession and use of land and rights to immovable property in the newly created Koh Kong Industrial Zone. The document, which declares that the land is state property, makes no mention of compensation. There are currently no known investment disputes involving government expropriation of property belonging to U.S. citizens. There were indications that the government was considering a program to compensate businesses for damages sustained from gunfire and looting by soldiers during the 1997 factional fighting, but no plan ever came to fruition.

Up to 17 Thai businesses sustained varying degrees of damage during anti-Thai rioting in Phnom Penh on January 29, 2003. The Cambodian government pledged to compensate Thai business owners for the damage, and the majority of claims have been resolved.

E. Dispute Settlement

Cambodia's legal system is a mosaic of pre-1975 statutes modeled on French law, communist-era legislation dating from 1979-1991, statutes put in place by the UN Transitional Authority in Cambodia (UNTAC) during the period 1991-93, and legislation passed by the Royal Government of Cambodia since 1993. The legal system contains many gaps in key areas such as secured transactions, bankruptcy (insolvency) and commercial arbitration.

Cambodian culture and its legal system have traditionally favoured mediation over adversarial conflict and adjudication. Thus, compromise solutions are the norm, even in cases where the law clearly favours one party in a dispute. The government is currently working on draft legislation to create a Commercial Court that might include an arbitration or mediation component.

Cambodia's court system is generally seen as non-transparent and subject to outside influence. Judges, who have been trained either for a short period in Cambodia or under other systems of law, have little access to published Cambodian statutes. Judges can be inexperienced and courts are often understaffed with little experience, particularly in adjudicating commercial disputes. The local and foreign business community reports frequent problems with inconsistent judicial rulings as well as outright corruption.

The Cambodian judiciary system is beginning to undergo reform. To provide the necessary background knowledge, judges and court staff from around the country are being trained by the Royal School for Judges and Prosecutors, which was created in 2002 and is the only school of its kind. There have fitful attempts to clean up the court system at the instigation of the Prime Minister who has announced measures, including dismissal, replacement and transfer of judges and prosecutors.

Cambodia has no commercial arbitration code. However, in 2001, Cambodia passed a law implementing the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, which Cambodia signed in 1960. Regardless of the legal basis for implementing arbitration awards, foreign or domestic, the ability of Cambodian courts to enforce decrees can be quite limited. The US Embassy is not aware that the Cambodian courts have been asked to recognise and enforce any foreign arbitral awards.

To handle specific disputes with regard to labor, the Ministry of Labor and Vocational Training, established a Labor Arbitration Council in May 2003. Basing its decision on the provisions of the Labor Law, the Council has 29 arbitrators. The Council is an independent body whose function is to resolve collective labor disputes that the Ministry is unable to solve by conciliation.

The Council’s decisions are non-binding but it has been markedly successful and its decisions are widely respected. The Council has been able to significantly reduce the number of industrial actions in the garment sector. The Council plays a vital role in contributing to the development of healthy industrial relations in Cambodia. The Council’s success in the garment industry has prompted unions in other sectors, e.g., the hospitality and tourism sectors, to seek the Council’s arbitration and mediation services.

F. Performance Requirements and Incentives

The Council for the Development of Cambodia (CDC), Cambodia's foreign investment approval body, administers a package of investment incentives. The CDC was created as a one-stop shop to facilitate foreign direct investment.

Under the amended Law on Investment, the profit tax exemption is allocated automatically on the basis of activity and minimum investment amounts as set out in the sub-decree. To maintain the incentives under the law, qualified investment projects (QIP) are required to obtain an annual Certificate of Compliance from the CDC and file this with the annual tax return.

The amended Law on Investment includes the following provisions, which include the exemption, in whole or in part, of customs duties and taxes, for QIPs:

--An exemption from the tax on profit imposed under the Law on Taxation for a set period. The tax exemption period is composed of a trigger period + 3 years + n year (n to be determined). The minimum allowable trigger period is to be the first year of profit or 3 years after the QIP earns its first revenue, whichever is sooner.

--100% exemption from import duties for construction material, production equipment and production input materials for export QIPs and supporting industry QIPs in accordance with the provisions of sub-decree.

--Transfer of incentives by merger or acquisition.

--Renewable land leases of up to 99 years on concession land for agricultural purposes and land ownership permitted to join ventures with over 50% equity owned by Cambodians.

--No price controls on goods produced or services rendered by investors.

--No discrimination between foreign and local investors.

--100% exemption from export tax or duty, except for activities specifically mentioned in the Law in Customs.

--Employment of foreign expatriates where no qualified Cambodians are available. QIPs are entitled to obtain visas and work permits.

--A QIP that is located in a designated special economic zone (SEZ) is entitled to the same incentives and privileges as other QIPs as stipulated in the law.

The September 2005 sub-decree on the Implementation of the Law on the Amendment to the Law on Investment also details investment activities that are not eligible for incentives, although investment is permitted. They include the following sectors: all types of commercial activities, import, export, wholesale, retail, duty free shops, entertainment (including restaurants, bars, nightclubs, massage parlours, and casinos) tourism service providers, currency and financial services, press and media related activities, professional services, production and processing of tobacco and wood products.

Incentives are also not eligible for production of certain products such as food and beverages, textiles, garment and footwear; plastic rubber and paper products with an investment less than $500,000. Investors are encouraged to refer to the sub-decree for details of other investment activities that are not eligible for incentives.

Investment activities that are eligible for customs duty exemption, but not eligible for the profit tax exemption are telecommunication basic services and exploration of gas and oil, including supply bases for gas and oil activities, and all kinds of mining.

According to Cambodia's 1995 law on The Establishment of the Bar, foreign business firms that wish to offer legal services in Cambodia must affiliate with a Cambodian attorney.

Investors who wish to take advantage of investment incentives must submit an application to the Cambodian Investment Board (CIB), the division of the CDC charged with reviewing investment applications. Investors not wishing to apply for investment incentives may establish their investment simply by registering corporate documents with the Department of Legal Affairs of the Ministry of Commerce.

Once an investor's application is submitted, the CDC will issue to the applicant either a Conditional Registration Certificate or a Letter of Non-Compliance within three workdays. The Conditional Registration Certificate will set out the terms such as, approvals, authorization, clearances, permits or registrations required. If the CDC fails to issue the Conditional Registration Certificate or Letter of Non-Compliance within three workdays, then the Conditional Registration Certificate will be taken to have been approved.

The CDC has the responsibility to obtain all of the licenses from relevant government agencies on behalf of the applicants. The relevant government agencies must issue the required documents no later than 28 workdays from the date of the Conditional Registration Certificate. At the end of the 28 days, the CDC will issue a Final Registration Certificate.

The Sub-decree on the Implementation of the Amendment of the Law on Investment adopted on September 27, 2005 does not require investors to place a deposit guaranteeing their investment except in cases in which the deposit is required in the concession contract. Investors who wish to apply are required to pay an application fee of seven million riel (approx. $1,750).

G. Right to Private Ownership and Establishment

There are no limits on the rights of foreign and domestic entities to establish and own business enterprises or to compete with public enterprises. However, the Constitution provides that only Khmer citizens or legal entities have the right to own land. A legal entity is considered to be Cambodian when at least 51% of its shares are owned by Cambodian citizen(s) or by Cambodian legal entities. Investment incentives vary depending on the nature of the investment project.

Under the 2001 Land Law, foreign investors may secure control over land through concession, a long-term lease (at least 15 years or more) or renewable short-term lease. If investors intend to take a long-term lease interest in land or ownership interest through a 51% Cambodian company, it is essential that caution be exercised to ensure that clear and unencumbered ownership of the land is verified.

The Land Law establishes a comprehensive legal framework for long-term leasing. The leaseholder has a contractual interest in the land, which means the lease can be sold or transferred though succession and can be pledged as security in order to raise financing. It is also important to make sure that the land ownership is clearly and legally established before entering into any leasing agreement.

H. Protection of Property Rights

Cambodia has adopted legislation concerning the protection of property rights, including the Land Law and the Copyrights and Patent and Industrial Design Law. Cambodia is a member of the World Intellectual Property Organization (WIPO) and the Paris Convention for the Protection of Industrial Property.

Chattel and real property: the 2001 Land Law provides a framework for real property security and a system for recording titles and ownership. Land titles issued prior to the end of the Khmer Rouge regime in 1979 are not recognized due to the severe dislocations that occurred during the Khmer Rouge period. The government is making efforts to accelerate the issuance of land titles, but in practice, the titling system is cumbersome and subject to corruption. The majority of property owners lack documentation proving ownership. Even where title records exist, recognition of legal title to land has been a problem in some court cases where judges have sought additional proof of ownership. Although foreigners are constitutionally forbidden to own land, the 2001 law allows them a long-term lease (15 or more years). Foreigners may also legally transfer ownership of buildings and improvements on the land that they lease. By law, foreign investors are allowed to own buildings on the long-term land lease. Cambodia has yet to establish the means by which such ownerships can be registered, however.

Intellectual property rights (IPR): As a WTO member, Cambodia's IPR regime is in compliance with its WTO commitments; however, comprehensive enforcement remains problematic. The 1996 U.S.-Cambodia Trade Agreement contained a broad range of IPR protection, but given Cambodia's very limited experience with IPR, the WTO agreement granted phase-in periods for the Cambodian government to fully implement IPR protection.

Trademarks: The Cambodian National Assembly has approved the Law Concerning Marks, Trade Names and Acts of Unfair Competition, hereafter called the trademark law, that complies with Cambodia's WTO obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Signed in February 2002, the law outlines specific penalties for trademark violations, including jail sentences and fines for counterfeiting registered marks. It also contains detailed procedures for registering trademarks, invalidation and removal, licensing of marks, and infringement and remedies.

Before a trademark law was in force, owners of trademarks were unable to seek relief from infringement in court. The relatively few complaints received were directed to the Ministry of Commerce, which has responsibility for registering trademarks but does not have clear legal authority to conduct enforcement activities. Nevertheless, the Ministry has taken effective action against trademark infringement in several cases since 1998. The Ministry has ordered local firms to stop using well-known U.S. marks, including Pizza Hut, Nike, Scotties, Marlboro, and Pringles. In 2005, the Ministry of Commerce solved 14 cases of IPR-related disputes, a decline from 31 cases in 2004.

Since 1991, the Ministry of Commerce has maintained an effective trademark registration system, registering more than 10,000 trademarks (over 2,900 for U.S. companies) under the terms of a 1991 sub-decree, and has proven cooperative in preventing unauthorized individuals from registering U.S. trademarks in Cambodia.

Copyrights: Copyrights are governed by the Law on Copyrights and Related Rights, which was enacted in January 2003. Responsibility for copyrights is split between the Ministry of Culture, which handles phonograms, CDs, and other recordings, and the Ministry of Information, which deals with printed materials. Before the adoption of the law, there was no enforcement of copyright provisions.

Although Cambodia is not a major center for the production and export of pirated CDs, videos, and other copyrighted materials, they are widely available in Cambodian markets. Pirated computer programs, VCDs, and music CDs are widely used throughout the country.

To protect and manage their economic rights, authors and related rights holders are allowed by law to establish a collective management organization (CMO). The creation of the CMO requires authorization from either the Ministry of Culture and Fine Arts or the Ministry of Information, depending on the nature of their work.

Patents and industrial designs: Cambodia has a very small industrial base, and infringement on patents and industrial designs is not yet commercially significant. With assistance from WIPO, the Ministry of Industry, Mines and Energy (MIME) prepared a comprehensive law on the protection of patents and industrial designs which went into force in January 2003. The law provides for the filing, registration, and protection of patents, utility model certificate and industrial designs. The MIME has also issued a sub-decree on granting patents and registering industrial designs.

Encrypted satellite signals, semiconductor layout designs, and trade secrets: Cambodia has not yet made significant progress toward enacting required legislation in these areas, although it obtained a model law on encrypted satellite signals and semiconductor layout designs from WIPO in March 1999.

IPR enforcement: With the exception of the trademark enforcement actions described above, the Cambodian government has taken few significant actions to enforce its IPR obligations. One of the few such actions was a police raid in October 2005 on a cigarette factory that was manufacturing counterfeit Marlboro cigarettes. The factory manager was later convicted in absentia. Cambodian copyright law allows owners of IPR to file a complaint with the authorities to take action. Law enforcement action taken at the request of owners is directed only against the piracy of domestically produced music or video products, but not against piracy of foreign optical media. The owners requesting crackdowns must pay support costs to the authorities for conducting the operation. Crackdowns on such IPR violation are not conducted on a consistent basis, however.

Infringements of IPR are pervasive, ranging from software, compact discs, and music, to photocopied books and the sale of counterfeit products, including drugs. Authors and local producers, particularly of optical media, frequently complain of the pervasive piracy.

The Ministry of Commerce has plans to put in place measures to stop IPR-violated products at borders, as post-inspection mechanisms are unlikely to be effective.

It is noteworthy that, on November 9, 2005, WTO granted a deadline extension until 2013 for Cambodia and other least developed countries to enforce copyright laws and begin accepting patents.

Transparency of the Regulatory System

There is no pattern of discrimination against foreign investors in Cambodia through a regulatory regime. Numerous issues of transparency in the regulatory regime arise, however, from the lack of legislation and the weakness of key institutions. Investors often complain that the decisions of Cambodian regulatory agencies are inconsistent, irrational, or corrupt.

The Cambodian government is still in the process of drafting laws and regulations that establish the framework for the market economy. In addition to existing law and regulation, in 2006, four laws pertaining to improving commercial and business environment were ratified: the Law on Management of Factories and Handicraft, Law on Commercial Arbitration, Sub-Degree on Risk Management and Civil Procedure Code. A commercial contract, secured transaction law and other important business-related laws such as insolvency, a law establishing the commercial court, e-commerce and personal property leasing laws are in draft only.

Cambodia currently has no anti-monopoly or anti-trust statutes and allows monopolies on certain products. On a practical level, Cambodia has recently indicated a desire to discourage monopolistic trading arrangements by relaxing some licensing and inspection requirements. It is unclear how effective these measures will be.

As previously mentioned, the tax system has been amended. The amendments brought substantial changes to the taxation regime applicable to businesses operating in Cambodia. The tax system currently includes a profit tax (20%), excluding certain natural-resource development projects and including all QIPs registered with the CDC; a withholding tax (4-15%); a salary or personal income tax (5-20%); a value added tax (10%); and specific excise taxes on certain merchandise (rates vary). There is a minimum turnover tax (1%). Some foreign inputs are exempt from this levy, but have to pay a 1% advanced profits tax instead. There are also import and export duties (rates vary). The U.S. and Cambodia have not signed a Double Taxation Treaty.

The Cambodian Constitution and the 1997 Labor Code provide for compliance with internationally recognized core labor standards. The law authorizes the Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation to set health, safety and other conditions for the workplace. (Section D of this report discusses the labor situation in more detail.)

The National Assembly passed a law and associated decree regulating pharmaceuticals in June 1996, giving administrative authority to the Ministry of Health to prescribe standards, quality control, and distribution and labeling requirements for medicines. In May 2000, the National Assembly passed a law on quality and safety of goods and services, comprising food safety, consumer protection and product liability. Food and product safety issues fall under the jurisdiction of the Cambodian standards authority, CamControl, which is under the Ministry of Commerce.

Cambodia is a member of the Codex Alimentarius Commission created by FAO and WHO in 1963 to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Program. The Ministry of Commerce is a focal point for Codex and created a National Codex Committee.

CamControl does not have a mechanism for industry participation in standards setting. There are currently no industry standards-setting organizations operating in Cambodia. Cambodia passed a sub-decree on Cambodia Industrial Standards, which provides the basis for the rules and procedures for adopting a new standard, technical regulations and conformity assessment procedures. The responsibility for setting industrial standards and certifications resides with the Department of Industrial Standards of Cambodia, the Ministry of Industry, Mine and Energy. The Law on Industrial Standards is in draft form pending approval.

Cambodia has issued a number of ministerial decisions pertaining to standardization. However, allegations are common that decisions are uneven and poorly enforced, albeit improved in the recent years. CamControl has taken more vigorous action against sub-standard products in the market.

Cambodia’s banks and financial institutions fall under the supervision of the National Bank of Cambodia (NBC). In November 1999, Cambodia passed a law on banking and financial institutions. In July 2000, Cambodia enacted an insurance law that gives the Ministry of Economy and Finance regulatory authority over the insurance industry.

The insurance market in Cambodia is relatively new, but it has begun to gain credibility and expand its scope. Currently, there are a few major insurance companies operating here such as Asia Insurance, the state-owned insurance company Caminco and Forte Insurance.

To stay competitive in the world market, the government has introduced specific measures to facilitate business, in particular exports, by attempting to reduce informal costs and streamline bureaucratic hurdles. Measures include: (1) introduction of a joint inspection by CamControl and the Customs and Excise Department and issuance of only one common inspection report valid for both agencies and “Federal Office” in order to reduce the amount of time spent on applying for goods inspection; (2) based on this common report, the Ministry of Industry, Mines, and Energy and the Ministry of Commerce will issue the Certificate of Processing (CP) and the Certificate of Origin (CO), respectively; (3) reduction of the costs of registration from $615 to $177 and of the time limit for Cambodian government issuance of registration from 30 days to ten and a half working days; and (4) reduction of time required to acquire documents related to C/O and exports and for goods inspection.

According to Emerging Markets Consulting’s report for 2005, since the introduction of the trade facilitation measures, the average costs for imports have decreased from $2,477 per transaction in 2003 to $673 in 2005. The average costs for exports were reduced from $942 in 2003 to $598 in 2005.

Cambodia has renewed its commitment to creating a favourable environment for investment and trade. It has also further committed to reducing unofficial fees and costs of imports and exports.

J. Capital Markets and Portfolio Investment

As part of the financial sector development blueprint, Cambodia had planned to develop capital markets by the end of 2007. However, the development of capital markets will not meet planned timeline because the country has not yet addressed such key issues as poor fiscal management.

Cambodia is slowly moving to address the need for capital markets. In November 2006, the National Assembly passed legislation to permit the government to issue bonds and use the capital to make up budget deficits. The Budget Law for 2007 permits the government to issue bonds worth

$250,000. There are plans to establish a stock market, but they are in the preliminary stage. There are not yet legal provisions for the purchase of equity in a company except by agreement with the existing owners. Most companies are privately held.

The Cambodian government does not use regulation of capital markets to restrict foreign investment. Domestic financing is difficult to obtain at competitive interest rates. There is currently no law addressing secured transactions or a system for registering such secured interests. The secured transaction law is currently in draft form pending approval from the National Assembly. Most loans are secured by real property mortgages or deposits of cash or other liquid assets, as provided for in the existing contract law and land law.

Export/import financing is available from multinational banks through a variety of credit instruments. The U.S. Overseas Private Investment Corporation (OPIC), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA) offer both investment guarantees and loans in Cambodia. Eximbank does not operate in Cambodia.

The total assets of Cambodia’s banking system as of August 2005 were approximately 4,764 billion riel (approx. $1.185 billion), an increase of 16% from the same period of 2004. Loans account for about 50% of the banking system’s assets, and it is impossible to estimate the percentage of loans that are non-performing. As of August 2005, credit granted by the commercial banks amounted to 2,368 billion riel ($588 million). Loans made to services and the wholesale and retail sectors accounted for some 55% of total loans.

Under the amended Law on Banking and Financial Institutions, all of Cambodia’s commercial banks had to reapply for licenses from the NBC, and meet new, stricter capital and prudential requirements. All banks were required to meet new capitalization requirements by the end of 2001. As a result, there was a significant shakeout and consolidation within the banking sector. The number of commercial banks was reduced from 31 to 15 as of December 2006.

K. Political Violence

Until the end of 1998, there was a diminishing but real threat of sporadic violence from remnant Khmer Rouge units. There were large-scale defections of the Khmer Rouge in late 1998, and the Cambodian government arrested Ta Mok, the last remaining Khmer Rouge military leader, in early 1999. The UN and the Cambodian government have signed an agreement to establish an international tribunal to try surviving Khmer Rouge leaders. Trials are expected to begin in 2007, although there have been lengthy delays in preparations. Election-relation violence has decreased in each national election held at five-year intervals since 1993. The next national election is scheduled for 2008.

L. Corruption

Though showing slight improvement, Cambodia's investment climate is still poor. The World Economic Forum's 2006 competitiveness survey ranked Cambodia 103 out of 125 countries surveyed, slightly up from 112 of 117 countries in 2005. The World Bank also ranked Cambodia near the bottom of the list, 133 of 155, on business climate. Corruption was cited by 80% of respondents to the World Economic Forum as the most problematic factor for doing business in Cambodia.

Business people, both local and foreign, have identified corruption, particularly within the judiciary, as the single biggest deterrent to investment in Cambodia. Public sector salaries range from $15-60 per month for working level officials, and less than $700 per month for high-ranking officials. Although there has been a recent salary increase of 15%, these wages are far below the level required to survive in Cambodia, and as a result, public employees are susceptible to corruption and conflicts of interest. Local and foreign businesses report that they must often pay extra facilitation fees to expedite any business transaction. Additionally, for those seeking to enter the Cambodian market, the process for awarding government contracts is not transparent and subject to major irregularities.

Current Cambodian laws and regulations and their application are insufficient to address the problem of corruption. Laws dating from the UNTAC period (1991-93) against embezzlement, extortion, and bribing public officials exist, but have never been enforced. Cambodia is not a signatory to the OECD Anti-Bribery Convention or any regional anti-corruption initiative. After a draft national anti-corruption law failed to win National Assembly approval in 1999, the Cambodian government undertook to revise the draft with cooperation from local and international NGOs, the World Bank, and bilateral donors. The draft, which is still pending, applies only to acts of corruption within Cambodia, and includes provisions to establish an anti-corruption commission, declaration of assets and criminal penalties for payment or acceptance of bribes to or by public officials.

Cambodia is under increasing pressure from donors to address the issue of good governance in general, and corruption in particular. In a draft action plan on good governance presented to donors in May 2000, Cambodia committed to pass anti-corruption legislation by late 2001 and by July 2003. In the December 2004 Consultative Group (CG) meeting of development assistance agencies, donors established a benchmark to have a new anti-corruption law submitted to the National Assembly before the next CG meeting, which was held March 2-3, 2006. Nevertheless, this deadline was not met and donors have become increasingly frustrated with the government’s failure to act.

The Ministry of Parliamentary Relations and Inspections has an anti-corruption mandate, but is largely inactive. The government also created an anti-corruption commission within the cabinet in late 1999, which has undertaken a few investigations, one of which resulted in the dismissal of a mid-level official in late 2001. Also in 2001, the government established a National Audit Authority, which has accomplished little.

Ignoring the existing commission, the government established the Anti-Corruption Body (ACB) on August 2006, a temporary body designed to address corruption until the anti-corruption legislation is passed. The mission of the ACB is to focus on prevention of corruption, strengthening law enforcement, and obtaining public support for combating corruption. The first investigation of ACB resulted in the arrest of five illegal car importers and 39 officials; 10 mid-level officials have been removed from their positions.

In its latest reform strategy, the Rectangular Strategy, the Cambodian government once again renewed its commitment to fight corruption and make good governance the centerpiece of reform. It verbally acknowledges the importance of taking action against corruption, but the challenge remains a daunting and long-term one that will require political will at the highest levels of the government.

M. Bilateral Investment and Agreements

Cambodia has signed bilateral investment agreements with Croatia, Cuba, Malaysia, Indonesia, Thailand, France, Switzerland, South Korea, Germany, Singapore, the People's Republic of China, the Netherlands, the Philippines, the United States, Vietnam, and the Organization of the Petroleum Exporting Countries (OPEC). The agreements provide reciprocal national treatment to investors, excluding benefits deriving from membership in future customs unions or free trade areas and agreements relating to taxation. The agreements preclude expropriations except those that are undertaken for a lawful or public purpose, non-discriminatory, and accompanied by prompt, adequate and effective compensation at the fair market value of the property prior to expropriation. They also guarantee repatriation of investments and provide for settlement of investment disputes via arbitration.

In addition, in July 2006, Cambodia signed a Trade and Investment Framework Agreement (TIFA) with the United States, which will promote greater trade and investment in both countries and provide a forum to address bilateral trade and investment issues.

N. OPIC and Other Investment Insurance Programs

Under the Quick Cover Program, the Overseas Private Investment Corporation (OPIC) currently offers financing and political risk insurance coverage for projects on an expedited basis. Cambodia is eligible for this program, although no U.S. investor has taken advantage of it. With most investment contracts written in U.S. dollars, there is little exchange risk. Even for riel-denominated transactions, there is only one exchange rate, which is fairly stable.

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Cambodia is a member of the Multilateral Investment Guarantee Agency of the World Bank, which offers political-risk insurance to foreign investors.

--Point of contact: Multilateral Investment Guarantee Agency (MIGA), 1818 H St. NW, Washington, DC 20433, USA, Tel: (001) 202-477-1234; fax: (001) 202-522-2630. Website: http://www.miga.org/

O. Labor

According to government statistics, the labor participation rate was 75 percent in 2005. The country has an economically active population (defined as being ten years of age and older) of some 7.8 million people out of a population of 14.1 million. The labor force grows at a rate of 3.4 percent annually, with at least 250,000 people entering the work force every year.

Of the labor force, approximately 73 percent are engaged in subsistence agriculture. About 330,000 people are employed in the garment sector while over 220,000 Cambodians work in the tourism sector.

The economy is not able to generate enough jobs in the formal sector to handle the large number of entrants to the job market. This dilemma is likely to become more pronounced over the next decade. Cambodia suffers from a large demographic imbalance. According to the 2004 Intersensal Population Survey (CIPS), persons of 20 years of age or younger account for 53 percent of the total population. As a result, over the next decade several hundred thousand new job seekers will enter the labor market each year.

In the 2005-2006 Global Competitiveness Report of the World Economic Forum, an inadequately educated workforce was identified as one of the most serious problems in doing business in Cambodia.

Given the severe disruption to the Cambodian education system and loss of skilled Cambodians during the 1975-79 Khmer Rouge period, workers with higher education or specialised skills are few and in high demand. A Cambodia Socio-Economic Survey conducted in 2004 found that about 12 percent of the labor force has completed at least an elementary education. Only 1.2 percent of the labor force completed post-secondary education.

Although overall literacy is 74.4 percent, the adult literacy rate is about 73.6 percent, with male literacy rates considerably higher than those for females in both urban and rural areas. Many adults and children enroll in supplementary educational programs, including English and computer training. Employers report that Cambodian workers are eager to learn and, when trained, are excellent, hardworking employees.

Cambodia's 1997 labor code protects the right of association and the rights to organize and bargain collectively. The code prohibits forced or compulsory labor, establishes 15 as the minimum allowable age for a salary position, and 18 as the minimum age for anyone engaged in work that is hazardous, unhealthy or unsafe. The statute also guarantees an eight-hour workday and 48-hour work week, provides for time-and-a-half overtime pay, with double overtime for night work or work on the employee's day off. The law gives the Ministry of Labor and Vocational Training (MOLVT) a legal mandate to set minimum wages after consultation with the tripartite Labor Advisory Committee. MOLVT set the minimum wage for the garment and footwear industries at $45 per month in August 2000, and following negotiations in 2006, the existing minimum has been increased $5 beginning in January 2007. There is no minimum wage for any other industry.

Cambodia does not currently have legislation governing worker health and safety, but there are various detailed ministerial regulations regarding payments in the event of on-the-job accidents. In labor disputes in which workers complain of poor or unhealthy conditions, MOLVT and the Ministry of Commerce have ordered the employer to take corrective measures.

Enforcement of many aspects of the labor code is poor, albeit improving, and the majority of labor disputes involve workers simply demanding conditions to which they are legally entitled. The U.S. Government, the ILO, and others are working closely with Cambodia to improve enforcement of the labor code, and workers' rights in general. The U.S.- Cambodia Bilateral Textile Agreement linked Cambodian compliance with internationally recognized core labor standards with the level of textile quota the U.S. granted to Cambodia. However, the quota regime ended at the end of the year 2004.

Cambodia has seen reasonably low inflation and stable, if not spectacular, economic growth rates during the past few years, keeping inflation-driven wage increases in check.

P. Foreign Trade Zones and Free Ports

To facilitate the country's development, the Cambodian government has shown great interest in increasing exports via geographically defined special economic zones (SEZ), with the goal of attracting much-needed foreign direct investment.

Cambodia has yet to pass the legislation called the Law on Industrial Zones which will define SEZs and establish the rules under which they will operate. The law is currently in draft form and awaiting approval from the National Assembly.

In late December 2005, the Council of Ministers passed a sub-decree on Establishment and Management of Special Economic Zones to speed up the creation of the zones. The sub-decree details procedures, conditions and incentives for the investors in the zone.

The government has so far approved three SEZs, located in Poipet (near the border with Thailand), Phnom Penh, and at Sihanoukville deep water sea port, and seven others have obtained licenses from the Cambodia Special Economic Zones Board (CSEZB). At the end of 2006, there were an additional four SEZs waiting to obtain licenses from CSEZB.

Q. Foreign Investment Statistics

Foreign Direct Investment (FDI) has been modest since 1995, with an average inflow of $167 million in the period 1995–2005. The FDI flow into Cambodia is uneven and gradually declined from $221 million in 1999 to $74 million in 2003. In 2005, FDI increased to $216 million.

Total FDI flows, registered capital, into Cambodia for the years 1995-2005 are presented in the table below, in US$ million. (Source: CDC) (Note: statistics from the National Bank of Cambodia and the Ministry of Commerce differ significantly from CDC's figures and from each other.)

1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
1,556	351	294	320	135	74	81	50	30	45	300

Figures from the CDC for registered capital of approved projects as of December, 2005, including domestic investment, and broken down by country of origin and economic sector, are provided below. These figures probably overstate actual investment, since figures are included for some projects that have not yet been, or may never be, fully implemented; retention of dormant or defunct projects from earlier years makes the investment figures appear higher.

Total cumulative registered investment projects approved, by country of origin, August 1994 to December 31, 2005. (source: CDC)

Country	US$ millions	pct.
Malaysia	1,553	35.3
Cambodia	1,031	23.4
China	463	10.5
Taiwan	360	8.2
Singapore	176	4.1
Thailand	151	3.4
U.K.	125	2.8
R.O.Korea	119	2.7
Hong Kong	115	2.6
Canada	56	1.2
Indonesia	54	1.2
Australia	49	1.1
USA	47	1.0
France	37	0.8
Japan	10	0.2
Other	33	0.7

Total	4,389	100%

Total cumulative registered investment capital by sector, from August 1994 to December 31, 2005 (source: CDC).

Country	US$ millions	No. of Projects
Industry	1,971	843
- Food Processing	130	47
- Garments	505	466
- Petroleum	264	15
- Wood Processing	255	40
- Footwear	39	26
Agriculture	186	95
Services	387	97
- Construction	155	18
- Telecommunications	121	14
Tourism	1,847	87
Total	4,389	1122

New investment projects in US$ millions, by country of origin, 1998-2005 (source: CDC).

Country	1998	1999	2000	2001	2002	2003	2004	2005
Malaysia	22.6	17	1.6	28	na	3.6	7.8	10.6
Cambodia	110	98	28	47	21	44	15	78.5
USA	2.3	4.4	3.7	5.2	na	na	2.1	2.2
Taiwan	79	29	16	35.6	5	1	4.6	4.1
Singapore	12	2.3	3.1	na	10	3.3	1.6	5.3
China	75	36	3.9	4.2	8	14	24	38
S. Korea	4.0	na	10	2	7.6	1	4.1	16
Hong Kong	48	22	4	0.7	1	1	na	0.3
France	0.6	0.6	3	na	na	1.7	0.6	0.4
Thailand	53	16	17	3.1	na	3.1	2.0	15
U.K.	0.4	1.5	6.5	1.5	0.4	0.5	1.5	1

Canada	2.1	0.2	1	na	2.2	na	1.7	0.6
Indonesia	10	0.4	3	na	na	na	na	na
Australia	1.4	0.02	0.8	na	na	0.6	na	7
Japan	2	2.1	0.2	na	1.2	na	0.7	na
Other	8.3	2.8	1.3	1.7	13.6	na	na	na
Total	430	233	103	129	69	74.3	66	379

New investment projects in US$ millions, by sector, 1998-2005

Country	1998	1999	2000	2001	2002	2003	2004	2005
Industry	298	101	48	61	22.5	41	53.5	325
- Food Processing	8.0	2.4	27	1.5	na	1.6	1	na
- Garments	91.6	49.5	28	17	12.6	42	19	54
- Petroleum	1	1	na	na	na	na	1	200
- Wood Processing	92	na	na	1	1	1.3	1	na
Agriculture	44	31.3	8.5	1	6.2	2.0	2.0	4.0
Services	22.1	55	10	5.2	18	5.5	5	32
- Construct	1.2	16.4	na	na	na	na	3.0	31
- Telecom	13.4	22	na	na	2.9	10	na	na
Tourism	67	45.5	36.5	61	22	26	5.5	18
Total	430	233	103	129	69	74	66	379

The CDC has registered approximately $50 million in U.S. investment since August 1994. In 2005, there were three US investment projects in the garment sector. Some of the main US companies operating in Cambodia include Caltex, which has a chain of service stations and a petroleum holding facility in Sihanoukville. Colony Capital, LLC has invested in the purchase of hotels from Raffles Holding of Singapore. Northbridge runs an international school and housing compound. There are U.S. investors in a number of Cambodia’s garment factories, such as Manhattan Textile and Garment Corp.

In March 2002, ChevronTexaco was awarded rights to Block A, a portion of Cambodian territorial waters in the Gulf of Thailand, for the exploration and production of oil and gas. Chevron has been proceeding with exploratory drilling and in January 2005 announced that it had found as yet unspecified oil and gas reserves. Chevron also has exploration rights to Blocks 7, 8 and 9, which lie in the overlapping claims area of the Gulf of Thailand disputed by Cambodia and Thailand.

Major non-U.S. foreign investors include Asia Pacific Breweries (Singapore), Asia Insurance (Hong Kong), Shell (UK/Netherlands), Total (France), Cambodia Airport Management Services (CAMS) (France), Samart Mobil Phone (Malaysia), Shinawatra Mobile Phone (now Singapore), Thakral Cambodia Industries (Singapore), Petronas Cambodia (Malaysia), Charoeun Pokphand (Thailand), and Cambrew (Malaysia).

Some major local companies and their sectors are: Sokimex (petroleum, tourism, garment), Royal Group of Companies (mobile phone, telecommunication, banking), AZ Distribution (construction, telecommunication), Mong Rethy Groups (construction, agro-industry, rubber and oil palm plantation), KT Pacific Group (airport project, construction, tobacco, food and electronics distribution), Hero King (cigarettes, casinos and power), Anco Brothers (cigarettes, casinos and power), Canadia Bank (banking and real estate) and Men Sarun Import and Export (agro-industry, rice and rubber export). Statistics on Cambodian investment overseas are not available, but such investments are likely minimal.